

## Way to Go!

### MCA DBE Liaison Committee Members

Donna Taylor	Oftedal
Marny Harrison	Century
Doug Dahlberg	JTL Missoula
Sue Platis	Highway Specialties
Katie Trotter	Poteet Construction
Wade Sellers	United Rentals-Alpine
Pat Bibeau	PS Contracting
Ted Burch	FHWA

## What's Happening?

- ▶ **No** MDT highway construction bid letting for October. The next Bid letting will be November 4th and will be advertised October 7th.
- ▶ Please be advised that Denver Atkinson has been returned to the position of TERO Director at Ft. Peck.
- ▶ In order to comply with new Montana state web standards, many of the MDT web pages will change effective **Wednesday, September 1, 2004.**



## Upcoming Dates

- ✓ Next Bid Letting—September 30th, Helena
- ✓ October 26, 27 & 28—Highway Contractor Workshop, Polson
- ✓ November 4 & 5, 2004—DBE Conference, Helena
- ✓ November 9, 2004—Government Costs Basis Contracting under FAR 31.2, Billings

## Upcoming Services

- ✓ Are you looking to create a company logo? Contact your DBE Supportive Services for assistance!



The National Center for American Indian Enterprise Development Workshop at Polson, August 18, 2004

*"How to Sell to the Government"*

## MONTANA DBE COMPANY MONTHLY UPDATE

### New Certified DBE Companies

Harvey Cole Construction, LLC	Harvey Cole	Polson, MT	Masonry, wall covering, texture & vinyl, texturing, paint contractor.
All Traffic Data Services, Inc.	Dawn Boivin	Arvada, CO	Traffic data collection (machine and manual counts)

### As Read MDT August 19, 2004 Bid Letting Results

Project No.	Prime Contractor	Prime \$	DBE Participation \$ / %	
<b>SFCX-STPHS 56(54)</b> Safety Improvements-Old US 312	Empire Sand & Gravel Company	\$ 3,630,714		
<b>NHTSA 1-2(126)153</b> Guardrail - West Glacier - SE	Omo Construction, Inc.	\$ 1,702,652		
<b>STPP 60-1(15)12</b> Culvert-N of White Sulphur Springs	Helena Sand & Gravel	\$ 178,997	\$ 9,577	5.35%

### CONTRACTORS ALERT!

#### Contractors Sold Fake Surety Insurance and Bid Bonds. Cease and Desist Issued. Accused Still At Large

A Cease and Desist order has been issued on a man suspected of participating in a scam that used insurance certificates and fake contractor bonds to win bids of public works projects. The man, Robert Joe Hanson, 46, of Las Vegas Nevada uses the company name Individual Surety, LTD and is not licensed in the State of Montana. Several small contracting companies in Montana have already been victimized by this scam. Cease and Desist orders have also been issued in Nevada, Florida and Georgia against Hanson and Individual Surety, LTD and there is a warrant out for his arrest in California.

Hanson is accused of acting as an insurance producer and selling fraudulent surety insurance, bid and performance bonds to small contractors in Montana. The majority of solicitations were made in the Butte area for construction projects at three locations in the State of Montana. Hanson illegally guaranteed surety bonds for \$185,000, \$13,900 and \$43,000. The construction bids made with these bonds totaled over \$4 million in Montana.

Investigators believe there are more Montana victims. Robert Joe Hanson's last known address was 2867 Destino Lane, Henderson, Nevada and Individual. Surety, LTD was last listed at 6402 McLeod Dr. #5, Las Vegas, Nevada. He has previously done business as Millennium Bonding and Global Bonding and recently has been operating a business called I.S., a Native American Corporation. If you are contacted by any of these entities or think you have been sold fraudulent surety insurance or bid bonds, please contact the Investigations Unit at the State Auditor's Office at 1-800-332-6148.

## DBE COMPANY SPOTLIGHT



Lisa Reed, President of Quality Landscape Seeding, Inc. announces relocation of company.

She writes; "Effective August 20, 2004, Quality Landscape Seeding, Inc. has a new address and phone numbers:

297 Lower Lynch Creek Road  
Plains, MT 59859  
406-826-7300 Phone  
406-826-7301 Fax

Our e-mail address, [seeding@montana.com](mailto:seeding@montana.com) and our website, [www.qualityseeding.com](http://www.qualityseeding.com) will remain the same.

Although our main office is relocating, we will continue to serve all of our commercial and residential customers on projects throughout Montana. It is our intent to maintain our level of service you have come to expect; however if you should have questions or concerns, please do not hesitate to contact us.

Thank you for your business—we couldn't do it without you!

Respectfully,

Lisa M. Read, P.E.

**Montana**  
**Economy at a Glance**  
**May 2004**

### Interested in the economy of Montana?

Check out this website:

<http://rad.dli.state.mt.us/pubs/pdf/eag0604.pdf>

## SUMMARY OF NEW OVERTIME EXEMPTION REQUIREMENTS

On August 23rd, 2004, new federal rules take effect which will result in the most sweeping changes in federal overtime pay rules in more than a quarter century. In addition to complying with the new rule, employers must also comply with State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Where Montana and federal rules are now largely the same, the changes will result in employers having to satisfy two different standards – the current Montana laws that will not change and the new federal rules. Simply put, you must satisfy all of the state requirements to be exempt under state law and all the federal requirements to be exempt under federal law. If you omit one or more of the requirements than the position might be exempt under one set of rules but the employee would retain eligibility for exemption under the other rules.

While employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week (federal). For example in the executive exemption, the new federal rule requires that the person hire and fire. The state's short test rule doesn't require that so the federal rule is more stringent since getting overtime is the higher standard compared to being exempt. Conversely, the state will probably require that 2 employees being supervised work 40 hours per week (or close to it) while the feds might allow fewer work hours where fewer hours to be defined as "full time" is the norm.

In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

### EXECUTIVE EXEMPTIONS

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Continued on page 4

## ADMINISTRATIVE EXEMPTION

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

## PROFESSIONAL EXEMPTION

To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

## CREATIVE PROFESSIONAL EMPLOYEE EXEMPTION

To qualify for the Creative professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

## OUTSIDE SALES EXEMPTION

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

## NOT EXEMPT

These exemptions do not apply to:

- Manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy such as production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, construction workers and laborers no matter how highly paid they might be.
- Police, fire fighters, paramedics, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.



## MONTANA DIFFERENCES



Montana Employers must be aware of differences between the federal and state rules:

1. Montana does not recognize the computer professional exemption.
2. Montana does not recognize the new "highly compensated employee" exemption.
3. Montana will likely continue to enforce the following current standards:
  - a. Primary duty of 50% or more performance of exempt work. (New Federal rule drops the percentage test)
  - b. Requirement that executives supervise 2 or more 40-hour-per-week employees. New federal rule allows industry custom to define "full-time".
  - c. May not allow deductions for disciplinary suspensions.
4. Outside sales definition will follow federal rule.
5. Effect of violations of salary basis rules may be broader under Montana enforcement. (New federal rules limit disqualification to those supervised by same official in same job title during period of non-compliance.)

Prepared by Jim Nys, Personnel Plus! Consulting Services, Inc. [www.personnel-plus.com](http://www.personnel-plus.com)



# SMALL BUSINESS ALERT!

Provided by the Deputy Securities Commissioner



Raising money for your business can get you into a sticky legal situation. When you raise money from friends, family members or other individuals to finance an enterprise, you may be "offering or selling a security" - an action which is governed by Montana Securities laws. These laws require certain disclosure to investors, and may require filing with the Montana Securities Department.

The Montana Securities Department is available to assist small businesses at any point they are interested in raising money. You can reach them toll-free in Montana at 1-800-332-6148.

Call the Department and inquire about how to raise funds for your business in the safest, easiest and LEGAL manner. Securities violations are easy to make and expensive to fix. A short brochure on capital formation is available by calling the Department or checking out our website at [www.sao.state.mt.us](http://www.sao.state.mt.us) and clicking on "securities".



**Certified Payroll Workshop,  
Pablo, MT, August 2004**

## *Quote of the Month*

"Experience is what allows us to recognize a mistake when we repeat it."

— Mark Twain

## — Listen and/or Read — Montana Department of Transportation Commission Meeting Minutes

You can access information about these meetings at MDT's website:

[http://www.mdt.state.mt.us/trans\\_comm/](http://www.mdt.state.mt.us/trans_comm/)

Click on **Meetings** to listen to audio files of the actual meetings or read meeting minutes. Meeting minutes are posted to the website as soon as the minutes are approved by the commission chairman.

You may also view next month's meeting agenda and location information. Contact information for commissioners is also available on this website.

If you have a question regarding commission meetings, please contact Lorelle Demont at 406-444-7200

## DEQ RECEIVES PENALTY PAYMENT FOR WATER QUALITY VIOLATION

### VIOLATION— *HELENA*

The Montana Department of Environmental Quality (DEQ) has settled its administrative enforcement action against the Montana Department of Transportation (MDT) for violations of the Montana Water Quality Act.

DEQ issued MDT an Administrative Compliance and Penalty Order for failing to follow the conditions of their Construction Storm Water Discharge Permit at the Otter North and South Project on Highway 484 in Powder River County, Montana. Specifically, MDT failed to submit required inspection reports upon request and failed to submit a notice of noncompliance report when sediment from the project discharged into state waters. MDT paid DEQ a \$2,775 penalty and must submit project inspection reports to DEQ on a monthly basis until MDT terminates the permit.



# MDT HIGHWAY CONSTRUCTION PROJECTS

## Invitation for Bids, Letting of September 30, 2004

**Note:** due to the reformatting of the internet web pages.

For the most complete and timely bid information, go to the web site <ftp://ftp.mdt.state.mt.us/contract/bid-packages/invitation.pdf> and click on Invitation for Bids. While the newsletter has notices posted, do not rely on this information alone.

Sealed bids on the following projects will be received by the MDT-Highways Division, Contract Plans Bureau, Room 101, 2701 Prospect, Helena, MT until 9:00 a.m. on September 30, 2004, the bids being publicly opened and read thereafter at 10:00 a.m. in the Department's auditorium. Bid proposals, plans, cross-sections, dirt runs & erosion control plans if available, and full instructions to bidders are on file for examination and may be obtained from the Contract Plans Bureau at 406-444-6216, 6212 or 6215, TTY 406-444-7696, Fax 406-444-7236 or go to web site [ftp://ftp.mdt.state.mt.us/contract/bid-packages/order\\_form.pdf](ftp://ftp.mdt.state.mt.us/contract/bid-packages/order_form.pdf) for order form.

**NH 5-2(119)19 — NO. OF ARLEE – VIC. WHITE COYOTE RD** - Federal Aid Project No. NH 5-2(119)19. Grading, gravel, plant mix surfacing, drainage, wetland restoration, retaining walls and bridge over Jocko River in Lake County. There is a mandatory pre-bid conference on September 15, 2004. DBE contract goal is 0.0%.

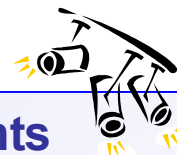
**MT 323-1(22)60 — ALZADA NORTH – PHASE 2** - Federal Aid Project No. MT 323-1(22)60 - Gravel surfacing, plant mix bituminous surfacing, seal and cover on 19.28 kilometers of the Alzada – North (Phase II) project in Carter County. DBE contract goal is 0.0%

**SFCS 363-1(7)9 — EAST OF WAGNER – EAST** - State Project No. SFCS 363-1(7)9 - Grade, gravel, plant mix surfacing with seal and cover on the East of Wagner – East project in Phillips County. No DBE Contract Goal.

**NH 1-1(69)32 — SIGNAL UPGRADE – LIBBY** - Federal Aid Project No. NH 1-1(69)32 - Signal Upgrade – Libby in Lincoln County. DBE contract goal is 0.0%.



## MCA DBE Liaison Committee Meeting Highlights



MCA DBE Liaison Committee is comprised of Contractors, Sub Contractors and MDT staff and the Committee's purpose is 1.) Providing a means of improving the relationship between the prime contractor and subcontractor; 2.) Providing valuable input to the DBE Program that will help DBE companies be better prepared for doing business in this industry; 3.) Input from the contractors will provide valuable information to help build a successful DBE program; 4.) Providing an opportunity for prime contractors, subcontractors, and MDT to discuss issues in a conducive environment for solutions.

Topics of discussion on June 24, 2004 and July 22, 2004 were:

### June 24, 2004

- ▶ **DBE Mentor/Protégé Program:** Overall, there seems to be some mixed feelings about a DBE Mentor/Protégé Program with respect to prime contractors training potential competitors. It was suggested that retired contractors be contacted to act as mentors.
- ▶ **Goal Methodology:** The DBE goal for the federal fiscal year 2004 is 6.29% (federal fiscal year is October 1st - September 30th). If the DBE participation is above the yearly goal, there will be no project specific goals. However, MDT strongly encourages prime contractors to still use DBE companies on those projects with no DBE goals. Regardless, the yearly goal still needs to be met. If DBE participation falls below the yearly goal, project-specific DBE goals will be set.

Continued on next page....

## More MT Contracting Opportunities

We try our best to notify you of other bid opportunities but please be aware that we may not be able to always give this information in a timely manner; therefore, listed below is the Website address of these opportunities where you can look for this information at any time on your own. Please note that information on these websites changes daily. You might want to make these sites a 'favorite' on you Internet page.

**Pioneer Mountains Scenic Bypass, PFH 73-1(5)**, Bid Due Date: Dec 1, 2004, Federal Highway Administration. Being considered for a total HubZone small business set-aside. This work consists of 6.88 km of grading, drainage, base, paving, structure, and two bridges. Project is located approximately 60 km northwest of Dillon, Montana. Western Federal Lands Highway Division, Phone (360)619-7520, [contracts@wfl.fha.dot.gov](mailto:contracts@wfl.fha.dot.gov)

<http://www.eps.gov/spg/DOT/FHWA/WFL/DTFH70-04-B-00003/listing.html>

**Work Order 05-01, Water and Sanitary Sewer Replacement/Rehabilitation, City of Billings, Andrew Mattie at 657-8242**. Bid Due Date: October 1, 2004, Engineering services for the Public Works Department/Engineering

<http://ci.billings.mt.us/Online/rfp.php>

**Stansbury Vermiculite Mine Reclamation Project, Department of Environmental Quality**, Bid Due Date: September 17, 2004, IFB 505009, Ravalli County. The work will consist of providing all labor, materials, earthwork and incidentals to regrade, spread soil, and revegetate disturbed areas on a 5.8 acre abandoned vermiculite mine, and to reclaim or water bar approximately 2,000' of road. <http://www.discoveringmontana.com/doa/gsd/osbs/Results.asp?List=All>

**Libby Creek Lower Cleveland Project, IFB05-1004P, MT General Services Division**, Bid Due Date: Sept 10, 2004, Montana Fish, Wildlife and Parks (FWP) for excavation work to be performed on the Libby Creek Lower Cleveland Project. <http://www.discoveringmontana.com/doa/gsd/content/bidsproposals/ifbsrfps/pdfdownloads/IFB05-1004P.doc>

**Aboveground Storage Tanks Removal, 307281, MT Dept of Transportation**, Bid Due Date: September 14, 2004

<http://www.discoveringmontana.com/doa/gsd/osbs/Results.asp?List=All>

### MCA DBE Liaison Committee Meeting Highlights—continued

July 22, 2004

- ▶ **MDT Contract Numbers:** MDT Civil Rights Bureau will be tracking projects using contract numbers and not by project name.
- ▶ **DBE Goal Methodology:** This year's goal methodology will be structured the same as last year's - based on ready, willing and able. The difference this year is data will be actual dollar amounts and not contract amount paid to prime and subcontractors as in the past.
- ▶ **Working with TERO's:** Members of the group shared some of their difficulties working with the TERO's; American Indians working on projects on reservations do not pay state taxes; and Vicky Koch planned to discuss some of the issues/concerns with the tribes at a meeting next month in Baker.
- ▶ **DBE Newsletter:** The Newsletter is viewed as a positive tool of communication and additional copies were requested as some of the companies have outer lying offices they would like to send a copy.

Please contact any committee member or MDT staff with your questions or issues for the committee to address at their monthly meeting. Next meeting is September 30th after the bid letting and the topics are Contractor Insurance and the new DBE goal..

View committee meeting minutes and agenda at: <http://www.mdt.state.mt.us/civilrights/mcadbe.shtml>

## **MDT CIVIL RIGHTS BUREAU**

Vicky Koch, Civil Rights Bureau Chief  
vkoch@state.mt.us (406) 444-6335

Leslie Wootan, Acting DBE Program Manager  
lwootan@state.mt.us, (406) 444-6337

Rebecca L. Johnson, DBE Supportive Services Manager  
rejohnson@state.mt.us (800) 883-5811

Elaine Arterburn, DBE Supportive Services Assistant  
Manager, earterburn@state.mt.us (800) 883-5811

Trudy Eaton, Civil Rights Bureau Administrative Asst.  
trueaton@state.mt.us (406) 444-6331

Jim Phillips, EEO Compliance Specialist  
jamphillips@state.mt.us (406) 444-6045

Bill Anderson, Title 6 Compliance Specialist  
bianderson@state.mt.us (406) 444-6334

Alice Flesch, Acting ADA Coordinator  
aflesch@state.mt.us (406) 444-9229

2701 Prospect Avenue/PO Box 201001, Helena, MT 59620-  
1001, (406) 444-6331, Fax (406) 444-7685 TTY (800) 335-7592  
[www.mdt.state.mt.us/civilrights/](http://www.mdt.state.mt.us/civilrights/) and click on  
Civil Rights Bureau

## **Inside this issue:**

<b>Way To Go! - MCA DBE Liaison Committee Members, What's Happening?, Upcoming Dates, Upcoming Services,</b>	<b>1</b>
<b>DBE Monthly Update, As Read Bid Results, Contractors Alert!</b>	<b>2</b>
<b>DBE Company Spotlight, Montana Economy at a Glance, Summary of New Overtime Exemption Requirements</b>	<b>3</b>
<b>Administrative Exemption, Professional Exemption, Creative Professional Employee Exemption, Outside Sales Exemption, Not Exempt, Montana Differences</b>	<b>4</b>
<b>Small Business Alert!, Quote of the Month, Listen/Read MDT Commission Meeting Minutes, DEQ Receives Penalty Payment for Water Quality</b>	<b>5</b>
<b>MDT Highway Construction Projects Invitation for Bids — Letting of Sept. 30, 2004, MCA DBE Liaison Committee Meeting Highlights</b>	<b>6</b>
<b>More MT Contracting Opportunities, MCA DBE Liaison Committee Meeting Highlights continued...</b>	<b>7</b>

250 copies of this public document were published and distributed at an estimated cost of 87 cents per copy for a total of \$217.50. MDT attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats will be provided upon request.



DBE Supportive Services, Civil Rights Bureau  
Montana Department of Transportation  
PO Box 201001  
Helena, MT 59620-1001

